



# LEGALITIES AND CHALLENGES OF ADOPTION IN INDIA

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## ABSTRACT

The focus of this study is on a complete analysis of Indian adoption law and how adoption laws around the world have little impact on Indian adoption law. Adoption has been practised for many decades, although it was only legalised in the nineteenth century. In India, there are many different religions, yet there is no single adoption law that applies to all of them. In India, the Hindu Adoption and Maintenance Act, 1956, is the only personal law that governs adoption. Because Indian religions such as Muslims, Christians, Jews, and Parsis lack their own personal legislation governing adoption, they are unable to adopt a child and give him or her their family name. Under the Guardians and Wards Act of 1890, they can only become the child's guardian. The Hindu Adoption and Maintenance Act of 1956 is followed by Hindus, Sikhs, Buddhists, and Jains. The Indian government attempted to create a national adoption law, but it proved unsuccessful. This article focuses on the adoption laws that govern adoption in India, as well as the need for a standard civil code in the domain of adoption.

**KEYWORDS:** Adoption, Legal, Child, Guardian.

## INTRODUCTION:

Although there is no broad rule prohibiting adoption, it is allowed under Hindu law and by tradition among a few numerically minor groups of people. Adoption is an issue of personal law because it is a legal affiliation of a child. Adoption rules do not exist for Muslims, Christians, or Parsis, hence they must go to court under the Guardians and Wards Act of 1890. Under the stated Act, Muslims, Christians, and Parsis can only take a kid into foster care. When a kid in foster care reaches the age of majority, he is free to cut all ties. Aside from that, such a child has no legal right to inherit. Foreigners who want to adopt Indian children must file a court application under the aforementioned Act. Adoption under foreign law, i.e., legislation applicable to guardians, takes place outside the country if the court has granted authorization for the child to be taken out of the country.

## LEGAL OVERVIEW:

The Hindu Adoption and Maintenance Act of 1956 and the Juvenile Justice (Care and Protection of Children) Act of 2000 are the primary laws that govern adoption in India. Both pieces of legislation have different provisions and goals. The Hindu Adoption and Marriage Act (HAMA) is the law that controls Hindu adoption and marriage. The term "Hindus" is used loosely here, as it encompasses Buddhists, Jains, and Sikhs. It grants an adopted kid all of the rights that a natural-born child would have, including the right to inherit. While Islamic doctrine does not forbid adoption, Muslim personal law does not consider an adopted kid to be equal to a natural-born child. Muslim couples are only allowed to be legal guardians of adoptive children under the Muslim Personal Law (Shariat) Application Act of 1937. Adopted children do not have the right to inherit their adoptive parents' possessions. These provisions are based on Shariat, an Islamic law that maintains that a child's tie to their biological parents is never lost. As a result, adoptive parents are only trustees for their children, not their biological parents (Sodha 2018), and the guardian-ward connection ends once the child reaches adulthood.

The Guardians and Ward Act of 1980 [GWA] was the sole way for non-Hindus to become guardians of children from their community until the Juvenile Justice Act of 2000. However, because the GWA selects legal guardians rather than natural parents, guardianship ends when the ward reaches the age of 21 and establishes individual status. Foreigners desiring to adopt an Indian kid would be need to go through a lengthy process under the GWA, which would be governed by no defined regulations. <sup>2</sup> The secular JJ Act, enacted in 2000 and revised in 2006, 2011, and 2015, rectified many of the prior laws' inconsistencies. The act's clauses provide that people of all faiths can adopt children without being bound by their personal laws, allowing the adoptive kid the same rights and privileges as a natural-born child. The JJ Act, according to Muslim Personal Law, welcomes Muslim prospective parents who could previously only be legal guardians into the fold. While the Act has addressed the inconsistencies of past legislations, it still left loopholes in succession and inheritance unfilled in practise.

It's worth noting that the advent of the Child Adoption Resource Information and Guidance System [CARINGS] in 2015 was a watershed event in the adoption process. The system serves as a centralised digital database of adoptable youngsters and prospective parents. CARINGS wants to facilitate as many adoptions as possible by ensuring a smooth and timely process. It is expected to make the existing adoption system more transparent and efficient. PAPs can also register online, upload documents, determine their eligibility, and check the status of their appli-

cations, among other things, under the new standards (Bajpai 2017).

## CHALLENGES AND UNADDRESSED ISSUES:

### A) A Long Wait, Declining Statistics, and Institutional Apathy:

Despite the fact that almost 29,000 prospective parents are willing to adopt, only 2,317 children are available for adoption, according to data (Pandit 2020b). This indicates a significant disparity between PAPs and children, which could lengthen the adoption process. Despite the fact that the CARINGS mechanism's major goal is to speed up the adoption process, the waiting period is getting longer. Despite the fact that the country has a large number of orphans, only a small percentage of them are accessible for adoption. This disparity arises because only 2,61,000 of the approximately 3 crore abandoned children are in institutionalised care, accounting for only 0.87 percent of the total (Bhandare 2018). However, the law does not require all Child Care Institutions [CCI] in India to be registered. There are 8,000 CCIs in all, including unregistered ones (Kalra 2018). The cost of not penalising unregistered CCIs is high. Unregistered facilities put children at risk of substandard care, physical assault, sexual abuse, and human trafficking. There is no functional mechanism to monitor and hold these organisations accountable because they are not registered.

### B) Disability and Adoption:

CARA conducted a national consensus meeting in January 2020 to discuss the prospect of enhancing and streamlining the adoption process. CARA reported, among other things, that the organisation created a classification system for children with exceptional needs that included fourteen sub-categories. PAPs would be better able to comprehend the children's needs and increase their chances of adoption as a result of the categorization (Pandit 2020a). The necessity for such classification arose as a result of a decrease in the number of children with special needs being adopted. Only 40 children with disabilities were adopted between 2018 and 2019, according to the most recent data available from CARA, accounting for about 1% of the total number of children adopted in the year (Ministry of Women and Child Development 2020). Domestic adoptions of children with special needs are decreasing year after year, according to annual trends. At the same time, the number of foreigners adopting special needs children is gradually increasing. When faced with a protracted wait for a "healthy" baby, Kumar claims that Indian PAPs turn to adopting children with disabilities as a last choice (Chandra 2018). Due to a cultural aversion to children with special needs, the majority of them are referred to PAPs in other countries. The children are at risk of being permanently relocated to another nation in this circumstance, rendering them even more vulnerable than previously.

### C) Manufactured Orphans and Child Trafficking:

After a nun from the shelter confessed to selling four children, Mother Teresa's Missionaries of Charity in Ranchi came under scrutiny for their "baby-selling racket" in 2018. (Press Trust of India 2018). As the pool of children available for adoption diminishes and waitlisted parents become impatient, similar incidents are becoming more regular. Traffickers strive to get hold of kids before their parents—often unwed mothers—arrive at government departments to relinquish the child, according to CARA's chief, Deepak Kumar. Children are frequently sourced from poor or marginalised families, with unwed mothers being lured or deceived into giving their chil-

children to trafficking rings. The organisations then construct legal documents that allow the 'orphaned' child to be sold. These kids are known as "made orphans" or "paper orphans" (Yeh, Ng, and Prasanna 2020). Prospective parents, fed up with the agony of waiting, pay lakhs of rupees for the fabricated orphans. In Maharashtra, two organisations were shut down in 2016 for selling kids for anywhere between INR 2,00,000 and 6,00,000. (Srivastava 2016). Child trafficking thrives in the underbelly of the Indian adoption system in the absence of strong adoption regulations and CCIs.

## CONCLUSION:

During the pandemic, social media was overwhelmed with unwarranted photo and contact information sharing in order to aid the adoption of COVID orphans, particularly youngsters from low-income families. COVID orphans were thus placed outside the legal scope of secure institutional care, reducing their chances of legitimate adoption and potentially subjecting them to illegal flesh trade, human trafficking, and forced labour. In this environment, Indian officials must engage in a discussion about adoption in general, not simply COVID orphans.

Several various laws protect children in India, as noted above, but their lax execution, combined with delays in addressing problems, contributes to institutional inefficiencies. Despite the implementation of the CARINGS system, there are still unresolved conflicts within existing regulations. Furthermore, the lack of a socio-legal framework continues to inform adoption procedures in the country, resulting in unfavourable outcomes for children whose wellbeing is categorically de-prioritized. This is especially true for children who have been abandoned, surrendered, or trafficked illegally. The adoption ecosystem must change from a parent-centric to a child-centric strategy, in addition to strengthening institutional mandates. Within the current regulatory framework and common discourse, adoption is viewed as a way for parents to fulfil their desire to form a family that transcends biological kinship standards and meets the wants and expectations of the parents (Kumar 2013). As a result, the child's viewpoint and interests are not considered during the adoption procedure. On the contrary, an inclusive strategy that focuses on a child's needs is required in order to establish an environment of acceptance, growth, and well-being, thereby acknowledging children as equal players in the adoption process.

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